



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 22, 1997

Mr. Burk A. Roberts  
Roberts & Roberts, L.L.P.  
P.O. Box P  
Killeen, Texas 76540

OR97-0116

Dear Mr. Roberts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103222.

The City of Harker Heights Police Department (the "department"), which you represent, received a request for any information in the department's offense report files regarding Juan Alberto Torres.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

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<sup>1</sup>Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, as the requestor appears to represent the individual who is the subject of the criminal history information, there is no privacy concern here.

<sup>2</sup>We note that the requestor has a power of attorney from Mr. Torres, who appears to be an incarcerated individual. As the department has asked this office for a decision, we need not consider the applicability of section 552.027 of the Government Code to this request.

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report;

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The other provisions of section 261.201 do not appear to apply here. We are not aware of any rules promulgated by the department which permit the dissemination of this type of information. Accordingly, we agree that some of the requested information is made confidential by section 261.201 of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code. See Open Records Decision No. 440 (1986) (applying former Fam. Code § 34.08). We have marked that information for your convenience.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.<sup>3</sup> *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We therefore conclude that, except for front page offense report information and the information discussed below, section 552.108 of the Government Code excepts the remainder of the requested records from required public disclosure. On the other hand, you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

Section 552.101 of the Government Code also excepts from disclosure information protected by common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the

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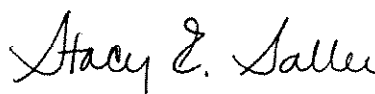
<sup>3</sup>The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. One of the reports identifies the alleged victim of a sexual assault. In that offense report, the department must withhold information that tends to identify the alleged victim. We have marked that report for your information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 103222

Enclosures: Submitted documents

cc: Mr. Jose J. Rodriguez  
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(w/o enclosures)